

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the Palen Solar Power)	09-AFC-7
Plant Project)	
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CALIFORNIA ENERGY COMMISSION
HEARING ROOM B
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, OCTOBER 5, 2010

2:02 p.m.

Reported by:
Peter Petty, CER
Contract No. 170-09-002

EHLERT BUSINESS GROUP

(916) 851-5976

COMMITTEE MEMBERS

Robert B. Weisenmiller, Commissioner and Presiding Member

Karen Douglas, Chairman and Associate Member

Galen Lemei, Advisor to Ms. Douglas

HEARING OFFICER, ADVISORS

Raoul Renaud, Hearing Officer

Eileen Allen, Advisor to Commissioner Weisenmiller

Galen Lemei, Advisor to Commissioner Douglas

STAFF, CONSULTANTS AND STAFF WITNESSES

Lisa DeCarlo, Staff Counsel

Alan Solomon, Project Manager

James Jewell (via telephone)

Michael Donovan (via telephone)

Susan Sanders (via telephone)

APPLICANT

Scott Galati, Attorney
Robert Gladden, Attorney
Galati and Blek for Solar Millennium

Alice Harron, Senior Director of Project Development
Michael Cressner
Solar Millennium, LLC

INTERVENORS

Jason W. Holder, Attorney, (via telephone)
Adams Broadwell Joseph & Cardozo
representing California Unions for Reliable Energy (CURE)

Laura Cunningham (via telephone)
Basin and Range Watch (B&RW)

Lisa T. Belenky, Attorney, (via telephone)
Center for Biological Diversity (CBD)

ALSO PRESENT

Dale Evenson (via telephone)
Riverside County Fire Department

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PROCEEDINGS

2:02 p.m.

HEARING OFFICER RENAUD: Good afternoon. This is the Prehearing Conference for the Palen Solar Power Project at the California Energy Commission.

My name is Raoul Renaud. I'm the Hearing Advisor assigned by the Committee to participate in these proceedings. To my right is the Presiding Member of the Committee, Commissioner Weisenmiller, and to his right is his advisor, Eileen Allen. To my left is Chairman Karen Douglas who is the Associate Member of this Committee, and her advisor to her left is Galen Lemei.

We are also -- we have our Web Ex system running this afternoon. I can see on the screen we have a number of callers in and we will get to you for introductions momentarily.

This proceeding is being recorded today and will be transcribed into a typed booklet that will be available for all the world to see on the Commission website.

Let's begin then with introductions of those here in the room starting with the Staff, please.

MS. DeCARLO: Good afternoon. Lisa DeCarlo, Energy Commission Staff Counsel. To my right is Energy Commission Project Manager Alan Solomon.

HEARING OFFICER RENAUD: Thank you. And the

1 Applicant, please.

2 MR. GALATI: Scott Galati, representing Palen
3 Solar Power, a Solar Millennium company.

4 MS. HARRON: Alice Harron, Solar Millennium.

5 MR. CRESSNER: Michael Cressner, Solar Millennium.

6 MR. GLADDEN: Bob Gladden with Solar Millennium.

7 HEARING OFFICER RENAUD: All right, thank you.

8 And turning to the, to the phone we have a number of parties
9 who have intervened in this case. And let me ask first if
10 we have anyone on the phone representing CURE.

11 MR. HOLDER: Yes, and good afternoon. This is
12 Jason Holder on behalf of CURE.

13 HEARING OFFICER RENAUD: Thank you and welcome.
14 Californians -- I'm sorry, the Center for Biological
15 Diversity, CBD.

16 MS. BELENKY: Yes, this is Lisa Belenky for Center
17 for Biological Diversity.

18 HEARING OFFICER RENAUD: Hi, Lisa, thank you for
19 calling in. Basin and Range Watch?

20 MS. CUNNINGHAM: Yeah, Laura Cunningham, Basin
21 and Range Watch.

22 HEARING OFFICER RENAUD: Welcome, thank you. Is
23 there anyone from CARE, Californians for Renewable Energy?

24 (No response.)

25 HEARING OFFICER RENAUD: Are there any Intervenors

1 I've missed? I think I got everyone.

2 (No response.)

3 HEARING OFFICER RENAUD: All right. Is there
4 anyone else on the phone who would like to introduce
5 themselves?

6 MR. EVENSON: Dale Evenson, Riverside County Fire.

7 HEARING OFFICER RENAUD: Welcome, sir. Anyone
8 else?

9 MR. JEWELL: This is James Jewell, the
10 Commission's consultant on light and vision.

11 HEARING OFFICER RENAUD: Thank you. Anyone else?

12 MR. DONOVAN: Michael Donovan, Commission's Soil
13 and Water expert.

14 HEARING OFFICER RENAUD: Thank you.

15 MS. SANDERS: Susan Sanders, biologist, Energy
16 Commission staff.

17 HEARING OFFICER RENAUD: Thank you.

18 Okay, well, then let's proceed. For those of you
19 participating by phone, please bear in mind that we can hear
20 everything that is going on at your end, so either keep the
21 noise level low or mute your phone. But please don't put us
22 on hold because you may very well start some music that we
23 don't particularly want to hear. So we appreciate you
24 keeping all that in mind.

25 Okay, let's get to the Prehearing Conference.

1 This is the Conference that the Committees for the Energy
2 Commission Siting Proceedings typically hold in advance of
3 the evidentiary hearings to analyze and assess the parties'
4 readiness for evidentiary hearings. In this case we've
5 scheduled the evidentiary hearings for October 13th and 14th
6 and October 27th.

7 In the Notice of Prehearing Conference we asked
8 that the parties file Prehearing Conference Statements and
9 we did receive those from the Applicant, the Staff, Basin
10 and Range Watch, CBD, and CURE, and we do thank you for
11 those Prehearing Conference Statements.

12 Probably the most important question we ask you to
13 address in your Prehearing Conference Statement is which
14 topics are ready in each party's view to proceed to
15 evidentiary hearings, and which party -- which topics are
16 not. And by "topics" I'm referring to the environmental
17 topics that are set forth in the decisions that we put out
18 here.

19 And there is some divergence among you on which
20 topics are ready and which are not. The Applicant provided
21 a table to their statement marked Table One, and describes
22 each topic as Category One, Two, or Three. And I'm thinking
23 maybe just for purposes of organization here today, we might
24 want to just use that to help keep us, keep us going down
25 the road. It's not an endorsement of Mr. Galati's technique

1 but it's the one we've got and I think it might work.

2 Category One is where the Applicant agrees with
3 the Staff's analysis and does not think that live testimony
4 is warranted. And, in such a case, if no party has live
5 testimony to put on we will typically accept the testimony
6 in written form by declaration of the parties.

7 Category Two is where the Applicant and Staff are
8 in disagreement about the conclusions reached by Staff or
9 the conditions of certification and, therefore, direct, live
10 testimony and cross-examination would be warranted. And
11 that's the type of proceeding where the Committee would
12 listen to the witnesses and then it would be the Committee's
13 job to adjudicate the issues there.

14 And Category Three is topic areas where the
15 Applicant disagrees with Intervenor and we would need live,
16 direct testimony and cross-examination.

17 Now, the Applicant has placed just about
18 everything in Category One except Biological Resources and
19 Traffic and Transportation. Biological Resources is always
20 a large issue in these desert solar power projects that
21 cover so much land. Traffic and Transportation in this case
22 is limited to the issue of the glint and glare possibilities
23 from the mirrors of the solar project and the possible
24 effect they might have on aircraft or motorists. I didn't
25 see any Category Three items, but I think that's probably

1 because you don't have anything from the Intervenor's yet.

2 Staff, I think you're pretty much in agreement
3 with Applicant except for Air Quality, and you're not ready
4 to proceed because you have no FDOC from the South Coast Air
5 Quality Management District.

6 MS. DeCARLO: Correct. We hope to have something
7 by the, right before the 27th and we'll then be able to
8 update our testimony on that. But as it stands now we don't
9 believe our testimony is complete to proceed.

10 HEARING OFFICER RENAUD: Okay. And you have also
11 indicated that you think Biological Resources may require
12 adjudication and again I think that's not surprising to the
13 Committee. That's very likely where we'll be spending quite
14 a bit of time in the evidentiary hearings. That is one of
15 the topics we will not hold until October 27th to
16 accommodate CBD, which would not be available for the
17 earlier sessions.

18 Staff has also indicated Alternatives as one of
19 the possible stipulated or noncontent, nondisputed topics.
20 However, CBD has indicated interest in pursuing Alternatives
21 further and that also is one of the topics we'll do on
22 October 27th; same for Soil and Water Resources. And it
23 appears that CBD at least, perhaps others, will want to have
24 testimony and evidence and have an opportunity to cross-
25 examine on that topic.

1 Basin and Range Watch has also indicated some
2 concerns. And I would like to actually ask CBD, was it
3 Laura? Laura, are you there, Laura Cunningham?

4 MS. CUNNINGHAM: Yes.

5 HEARING OFFICER RENAUD: In Item Two of your
6 Prehearing Conference Statement you've indicated that the
7 following topics are not complete and not ready to proceed,
8 and there's quite a few of them here: Biological Resources,
9 Soil and Water, Visual, Alternatives, Air Quality, Hazardous
10 Materials, Worker Safety, and Cultural Resources. On what
11 basis does, do you contend those are not complete? What
12 more do you need?

13 MS. CUNNINGHAM: On Visual Resources we had
14 questions on the nearness of wilderness areas and how that
15 would be mitigated, and it probably can't be. On Hazardous
16 Material we had a few questions involving thermintol and
17 leaks and safety on that. And that might be able to be just
18 be resolved with more questions, more - like a cross-
19 examination. And Cultural, apparently there is still quite
20 a lot of issue with some of the tribes, but since they're
21 not participating we probably couldn't speak for them. But
22 we feel Cultural is definitely not settled, not resolved.

23 HEARING OFFICER RENAUD: What about Air Quality?

24 MS. CUNNINGHAM: Yeah, we have some questions on
25 Air Quality, too.

1 HEARING OFFICER RENAUD: When you say they're not
2 complete, what we interpret that to mean is that more
3 evidence needs to be gathered. Are you planning to gather
4 more evidence on those topics?

5 MS. CUNNINGHAM: We're actually trying to get some
6 information, even maybe an expert witness on Cultural, but
7 we probably -- I don't know if we can in time for the
8 hearing. So yes, the answer's yes.

9 HEARING OFFICER RENAUD: Okay. And why weren't
10 you able to do that earlier, get that witness, because the
11 other parties have lined up witnesses by now?

12 MS. CUNNINGHAM: These are tribal members and they
13 need -- actually just let us know about a week ago of their
14 concerns concerning Palen.

15 HEARING OFFICER RENAUD: All right. Are there any
16 other witnesses you're trying to line up besides the
17 Cultural?

18 MS. CUNNINGHAM: No.

19 HEARING OFFICER RENAUD: All right. Pardon my
20 ignorance, but probably everyone else here knows this but I
21 don't. In number three you've indicated impacts to
22 tortoises, DWMA. What does that mean, DWMA?

23 MS. CUNNINGHAM: Desert Wildlife Management Area.

24 HEARING OFFICER RENAUD: I see, all right, all
25 right, okay. Thank you for that explanation.

1 MS. CUNNINGHAM: Sorry about that.

2 HEARING OFFICER RENAUD: No, that's all right.

3 All right, and then CBD, your statement is similar
4 to that of Basin and Range Watch, indicates some topics you
5 view as not complete. You indicate you're preparing to
6 proceed on October 27th on Air Quality, Alternatives,
7 Biological, and Soil and Water, and that was the
8 understanding that we would do those topics on the
9 October 27th date.

10 And you indicate you don't think they're complete
11 because of lack of adequate information and analysis of the
12 impacts. So basically you're saying you don't think the
13 analysis to date is sufficient. Does CBD intend to produce
14 additional information or gather additional facts to be able
15 to present that in an affirmative manner?

16 MS. BELENKY: Well, on Alternatives and Biological
17 Resources we will submit testimony -- I guess it's due now
18 tomorrow, specific testimony. Given the very short time
19 since we've had the RSA, we haven't yet been able to
20 determine whether we need to have affirmative testimony on
21 Air Quality and Soil and Water. But I suppose that we will
22 have to waive that because of the very short timeline. But
23 we do not believe that those are complete and we would like
24 the opportunity to cross-examine the witnesses from the
25 Staff and the Applicant on those issues.

1 HEARING OFFICER RENAUD: Well, the RSA Part Two
2 came out September 16th and the hearing on those topics is
3 October 27th. Do you think between now and then you'd be
4 able to get ready?

5 MS. BELENKY: Yes, but not get the testimony by
6 what was actually supposed to be today.

7 HEARING OFFICER RENAUD: I understand, okay. That
8 makes sense.

9 MS. BELENKY: I think we feel that we can get
10 ready for these topics by the 27th but, you know, it's a
11 very short date to try and get experts and line them up for
12 testimony by tomorrow.

13 HEARING OFFICER RENAUD: All right. And the
14 Committee did set forth a schedule which gives you until --
15 I'm going to get the date here -- oh, I see, yeah. We did
16 ask for all the testimony to be filed starting tomorrow and
17 then the rebuttal on the 11th. And are you indicating you
18 would need more time than that to be ready for the 27th?

19 MS. BELENKY: Well --

20 HEARING OFFICER RENAUD: That's something we could
21 talk about here. I mean, we --

22 MS. BELENKY: Oh, okay. I mean, it would
23 definitely help us if we could submit opening testimony on
24 some of these issues. I mean, the Alternatives and Biology
25 we're prepared to submit tomorrow.

1 HEARING OFFICER RENAUD: Good.

2 MS. BELENKY: And if we would have at least the
3 option of submitting additional testimony. And I would say
4 at least until the October 12th because the 11th is
5 technically a holiday for most people. So that would -- or
6 even a few days more than that would really help as far as
7 us being able to have an affirmative case. And we may
8 determine we don't need it but I think at this time we would
9 like to at least have a chance to make that determination.

10 HEARING OFFICER RENAUD: Let me just throw this
11 out for discussion here. What would the Applicant think of
12 CBD's proposal to allow additional time for their filing on
13 Alternatives -- no, Air Quality and Soil and Water
14 Resources?

15 MR. GALATI: First of all I think that we don't
16 have a problem with extending some of it, but I'd like to
17 talk to you about rebuttal as well. Like for example, I'm
18 not planning to bring any witnesses or file any testimony in
19 Soil and Water other than I agree with Staff. That's what
20 my opening testimony is going to be, so I have to wait until
21 somebody files testimony that I disagree with to file a
22 rebuttal. I can't anticipate what the issues are and file
23 affirmative testimony about what they might be. So we do
24 need at least a week for rebuttal testimony for anything
25 that does come in. So I don't have any problem going to the

1 12th, but then we need probably to the 19th or 20th to be
2 able to file rebuttal testimony. So if I could get a better
3 understanding of which areas would be filed on the 12th and
4 which areas would be filed tomorrow, that might be helpful.

5 HEARING OFFICER RENAUD: The two that would be
6 later would be Soil and Water and Alternatives, I believe
7 you said, right?

8 MS. BELENKY: No, no. Alternatives and Biological
9 Resources are going to be filed tomorrow.

10 HEARING OFFICER RENAUD: That's right. Then it's
11 Air Quality, right?

12 MS. BELENKY: Air Quality and Soil and Water,
13 yeah.

14 HEARING OFFICER RENAUD: Air Quality and Soil and
15 Water Resources.

16 MR. GALATI: What would be helpful -- that would
17 be fine. Can we move all rebuttal testimony to the 19th?
18 It's kind of hard to, you know, have two rounds of rebuttal
19 testimony. Ms. Belenky, would you mind if we moved all
20 rebuttal testimony to the 19th?

21 HEARING OFFICER RENAUD: On the four topics for
22 the 27th.

23 MR. GALATI: I was thinking I don't have any idea
24 on all the rebuttals. For example, Basin and Range Watch
25 has questions on or disputed the topic area of the safety of

1 HTF, so --

2 HEARING OFFICER RENAUD: Well, but that's an
3 October 13-14 topic.

4 MR. GALATI: Yeah, okay, I see what you're saying.

5 HEARING OFFICER RENAUD: So --

6 MR. GALATI: Rebuttal testimony for everything
7 that is after the 13th-14th on those four topics, we could
8 have those to the 19th.

9 HEARING OFFICER RENAUD: Okay, anybody else wish
10 to -- Staff, do you want to weigh in on that?

11 MS. DeCARLO: I don't see a problem with that. We
12 have varying staff schedules, they wanted to take some
13 vacation before the 27th hearing but I think we can
14 accommodate that.

15 HEARING OFFICER RENAUD: Any of the other parties
16 want to respond to CBD's proposal to extend the time for
17 filing testimony on Air Quality and Soil and Water Resources
18 until several days past. We're thinking -- you mentioned
19 the 12th. I was thinking maybe the 15th.

20 MS. CUNNINGHAM: Laura Cunningham here. We are
21 accepting of that.

22 HEARING OFFICER RENAUD: All right. Anyone else?

23 MR. GALATI: If you moved it to the 15th, could we
24 have a week to file rebuttal testimony? So we would move
25 that to the 22nd.

1 HEARING OFFICER RENAUD: The Committee can live
2 with that. I mean --

3 MR. GALATI: Okay.

4 HEARING OFFICER RENAUD: -- we'll be able to be
5 ready. I know CBD has their retreat that week. So I'm just
6 thinking toward the end of that week might be, might help
7 you. Would it, would it Ms. Belenky?

8 MS. BELENKY: Yeah, that's fine. I'm sure I'm
9 going to be working during the retreat, but at least I'll be
10 in a beautiful, remote location while I do it.

11 HEARING OFFICER RENAUD: Undisclosed, I take it?

12 MS. BELENKY: Well, you know, somewhere in
13 Arizona.

14 MR. GALATI: Okay. Do the parties agree that if
15 we move, if we move rebuttal testimony to the 22nd we could
16 use -- it's rebuttal testimony for all four of those topic
17 areas. For example, if they file Biology on the 6th, can I
18 have until the 22nd to file Biology rebuttals to the 22nd?

19 HEARING OFFICER RENAUD: On the theory that we're
20 doing all four of those on the 27th?

21 MR. GALATI: Correct. I also had an issue with my
22 particular biologist who is in the field doing
23 preconstruction surveys on some of the projects you just
24 approved, and so I could use some time. I was going to ask
25 for the 20th, but if we do it all on the 22nd, if the

1 Committee's okay with that, that would help us.

2 HEARING OFFICER RENAUD: I think from the
3 Committee's perspective this sounds reasonable. Go ahead,
4 Staff.

5 MS. DeCARLO: Well, that does crunch Staff's
6 ability to prepare for hearings; it only gives us two days.
7 And depending upon the extensiveness of the rebuttal --

8 HEARING OFFICER RENAUD: Two topics would be
9 better than four, in other words.

10 MS. DeCARLO: It would, but, you know, Staff will
11 do what we can.

12 MR. GALATI: I would point out, though, that
13 everybody's testimony, opening testimony is rebuttal to
14 Staff. So rebuttal is due on the 6th and rebuttal to each
15 other is due on the 22nd.

16 MS. DeCARLO: I guess I would just be concerned if
17 rebuttal went extensively beyond the opening testimony, if
18 it was used to expand upon that.

19 MR. GALATI: From the Applicant's perspective our
20 rebuttal to Staff will be filed on the 6th and that, on the
21 22nd, we'll be rebutting things we've seen for the first
22 time on the 6th from the parties. That's all we'll be
23 addressing.

24 HEARING OFFICER RENAUD: I think that sounds
25 reasonable and doable. Rebuttal typically isn't as

1 extensive as opening testimony and parties should be able to
2 absorb that and be prepared to address it over the course of
3 five days after that, so I think that's how, that's how
4 we'll proceed.

5 Getting back to Basin and Range Watch,
6 Ms. Cunningham, I wanted to ask you about another statement
7 in your, in your Prehearing Conference Statement, number
8 five. You indicated you needed to see the other parties'
9 Prehearing Conference Statements, witness lists, and exhibit
10 lists. You couldn't be certain about the nature or extent
11 of cross-examination. Do you have anything further for us
12 on that since you now have the Prehearing Conference
13 Statements from the parties?

14 MS. CUNNINGHAM: Yeah, I can just say we would
15 want ten minutes cross-examination time for the listed
16 issues.

17 HEARING OFFICER RENAUD: Okay, we'll make note of
18 that.

19 MR. GALATI: Okay, just to clarify. For example
20 on the list, which we'll be hearing on the 13th and the
21 14th, is Hazardous Materials and Worker Safety and Cultural
22 Resources.

23 HEARING OFFICER RENAUD: Right.

24 MR. GALATI: All of those areas I was not
25 intending to bring a witness. Is Ms. Cunningham asking for

1 an Applicant witness or is she asking for Staff witness to
2 cross-examine? I don't know what the issues are.

3 MS. CUNNINGHAM: Well, I guess it would be Staff
4 if we had any questions. I'm actually still reading through
5 the Staff Assessment so I'll be prepared next week.

6 HEARING OFFICER RENAUD: I'm not sure what that
7 means, be prepared next week. Oh, you'll be prepared next
8 week.

9 MS. CUNNINGHAM: Yeah, I'm still reading through
10 the Revised Staff Assessment and I'll know more what I would
11 like to ask Staff.

12 HEARING OFFICER RENAUD: All right. Does Basin
13 and Range Watch anticipate addressing the issue of Cultural
14 Resources to any great extent?

15 MS. CUNNINGHAM: Maybe just ten minutes or less
16 worth of questions.

17 HEARING OFFICER RENAUD: Okay, okay, good. CURE,
18 we haven't heard from you. Anything you wish to tell us
19 about?

20 MR. HOLDER: Thank you very much, Hearing Officer
21 Renaud. We did come to an agreement with the Applicant and
22 I have a - I can describe that for you if you'd like or we
23 can talk about that later.

24 HEARING OFFICER RENAUD: Well, usually we -- well,
25 there isn't any usually. I've seen this done at the, at the

1 first session of the evidentiary hearings, CURE would come
2 in and put the agreement on the record. You might want to
3 plan on doing that anyway. I'm not sure we need to know
4 much more about it than that. If it's something you'd like
5 to file in advance, you'd be welcome to do that as well.

6 MR. HOLDER: I'd like to describe it just briefly,
7 and we do intend to docket it either today or tomorrow.

8 HEARING OFFICER RENAUD: All right, go ahead.

9 MR. HOLDER: Well, first of all I want just to
10 express our appreciation for both the Staff and the
11 Applicant's diligence in analyzing the impacts of the
12 project. And I want to express my appreciation for the
13 Commission's transparent process for conducting
14 environmental review and for allowing us the opportunity to
15 intervene in this proceeding as Intervenors.

16 Our agreement, the Applicant has committed to
17 implementing measures to avoid and minimize significant
18 impacts to desert washes, special status plants, and
19 wildlife during construction and operation of the project.
20 The Applicant also committed to minimizing the impacts to
21 desert tortoise by preparing a desert tortoise translocation
22 and relocation plan that complies with the latest Fish and
23 Wildlife Service guidelines. And the Applicant has also
24 agreed to implement measures to respond to the potential
25 presence of unexploded ordinance and munitions that are

1 potentially present on the project site, as appropriate.

2 So we're happy to announce this agreement and we
3 don't anticipate presenting evidence or witnesses at the
4 evidentiary hearings.

5 HEARING OFFICER RENAUD: All right. Well, thank
6 you for that and we're pleased to hear that your client's
7 concerns have been resolved.

8 MR. HOLDER: Thank you.

9 HEARING OFFICER RENAUD: Parties, let's talk a
10 little bit about the order of presentation. Sometimes there
11 is a witness who is only available for a certain time window
12 and so we try and work around that. Is anybody aware of
13 anyone they wish to call as a witness who can only appear at
14 a certain time on the 13th and 14th?

15 MR. GALATI: I guess I -- On the 13th and 14th --
16 first of all, I believe, based on what I'm seeing in the
17 other parties Prehearing Conferences and our own is I don't
18 believe we'll need the 14th. From the Applicant's
19 perspective, I was only going to put affirmative testimony
20 on the 13th and 14th related to one condition of
21 certification and one tiny piece of it on Trans-6. I
22 estimated 30 minutes just so I wouldn't underestimate, and
23 30 minutes of possible cross-examination of staff on that
24 point alone. I believe that is for the 13th and 14th the
25 only live testimony that I'd be presenting. I would ask the

1 Committee to budget maybe about 45 minutes to an hour to
2 accept all the rest of the documents in as evidence with the
3 exhibits marked and get those into the record.

4 And so the only other thing that -- from the
5 Applicant's perspective that I needed to understand was who
6 needs me to bring a live witness in an area that I don't
7 have a dispute with Staff. So I need someone to say -- does
8 my Hazardous Materials person need to be present or
9 whatever. But I actually think that we have been extremely
10 productive.

11 So switch to the 27th for just a minute so the
12 Committee appreciates the hard work that Staff and Applicant
13 have done. We are down to three conditions that we are
14 having any further discussion about. We had a framework
15 that I thought that might actually work for two of those
16 conditions, it's Biology 23 and Biology 24. The only reason
17 I placed it as disputed, the Staff hasn't yet seen our
18 proposed language since we worked on it yesterday, and so we
19 haven't yet filed it. But it is entirely likely that at
20 least some of what we put in 23 and 24 will be accepted by
21 Staff because we had great conversations. So, again, I
22 don't think that would take very long.

23 And then lastly is a very narrow issue of how
24 indirect impacts or calculated on Bio-20 for the Mojave
25 fringe-toed lizard, associated with sand transport. Again,

1 a very narrow issue.

2 So I think that Staff has been very good in
3 working with us, working on alternative language, and I --
4 we're down to probably an hour and a half of dispute with
5 Staff on a very large project. So from our perspective I
6 think that we're being very efficient and we don't see a lot
7 of Committee time. Of course, I reserve the right to see
8 what the Intervenor's file because I probably will be
9 bringing rebuttal witnesses. But that will be the large
10 amount of time, it seems to me, is responding to the
11 Intervenor's testimony.

12 HEARING OFFICER RENAUD: All right, thank you for
13 that. Staff, do you wish to weigh in there?

14 MS. DeCARLO: The only potential time constraint
15 we have is for our Hazmat and Worker Safety expert whom, I
16 guess, Basin and Range Watch wanted to cross-examine. He is
17 not available on the 13th from 11 to one. But if we could
18 tackle that first, first thing that morning when we start at
19 ten, and Basin and Range Watch indicated they only needed
20 about ten minutes for cross-examination. We might need
21 about 15 minutes of direct.

22 HEARING OFFICER RENAUD: Very good, thank you.
23 All right.

24 MR. GALATI: And I did forget that one of our
25 witnesses is specifically associated with the desert

1 tortoise. She will be in the field so she can call in if
2 the Committee is okay with her actually calling in and being
3 sworn over the phone.

4 HEARING OFFICER RENAUD: So this would be the
5 27th.

6 MR. GALATI: That would be for the 27th and that's
7 based -- Right now we don't plan on using her, but I'm
8 assuming if we get some sort of rebuttal testimony that we
9 need to respond to.

10 HEARING OFFICER RENAUD: All right, great.

11 MR. GALATI: We'll have a panel available. She'll
12 be one of them but she'll have to call in.

13 HEARING OFFICER RENAUD: All right. Basin and
14 Range Watch, the Committee asked each party to list the
15 topics that you would wish to cross-examine witnesses, the
16 summary of the scope of such cross-examination, and the
17 time. You've indicated ten minutes on one topic. Are there
18 other topics or other specific witnesses you want to be able
19 to cross-examine in person on October 13th?

20 MS. CUNNINGHAM: Not at this time.

21 HEARING OFFICER RENAUD: And now is the time, so
22 we need to make plans.

23 MS. CUNNINGHAM: The answer is no.

24 HEARING OFFICER RENAUD: All right, thank you.
25 And CBD, we know your time will be on the 27th and I think

1 by then we'll have a pretty good idea of --

2 MS. BELENKY: Yeah. I just wanted to say, because
3 I think there's some confusion here. The Center did
4 participate in the workshops, the last two workshops on
5 Biological Resources. The fact that the Applicant and the
6 Staff have been able to reach agreement does not mean that
7 other parties have not attempted to reach agreement or have
8 not been part of bringing issues forward. I think that -- I
9 just don't want to leave any misunderstanding on that point.

10 HEARING OFFICER RENAUD: Yes. No, I don't think
11 we assumed, made that assumption at all, we understand. And
12 all we're trying to do at this point is get an idea of which
13 parties need to have available which witnesses, and I think
14 we've pretty much got that sorted out for October 13th. And
15 as to October 27th, I think we might as well table that
16 question for a little while until we see some testimony
17 filed and then you'll be able to give us a better idea about
18 that. Would I be correct in saying that?

19 MS. BELENKY: Yes. We may have a revised amount
20 of time we might want to cross-examine different people once
21 we see the testimony.

22 HEARING OFFICER RENAUD: All right. That sounds
23 reasonable.

24 MS. DeCARLO: I have a quick question for the
25 Committee.

1 HEARING OFFICER RENAUD: Yes.

2 MS. DeCARLO: Basin and Range Watch's request
3 cross-examination on Visual Resources. Our expert is in
4 Oregon. Would the Committee like him to appear in person or
5 is telephonically acceptable?

6 HEARING OFFICER RENAUD: Basin and Range Watch, do
7 you still want to cross-examine the Visual Resources
8 witness, excuse me, on October 13th?

9 MS. CUNNINGHAM: No, we don't need to.

10 HEARING OFFICER RENAUD: All right. Then that
11 settles that. All right.

12 MR. GALATI: And just to clarify for the record,
13 the Applicant is not required to bring anybody to the 13th
14 or the 14th hearings for cross-examination?

15 HEARING OFFICER RENAUD: No.

16 MR. GALATI: Basin and Range Watch nor -- and the
17 issues that were raised by CBD will be handled on the 27th.

18 HEARING OFFICER RENAUD: Right, I think so. Did
19 you all hear that? Just if anybody disagrees with that, let
20 me know.

21 MS. CUNNINGHAM: We agree with that.

22 HEARING OFFICER RENAUD: All right, thank you.

23 MS. DeCARLO: And one additional question. On the
24 27th we'll be prepared to bring our Soil and Water experts.
25 We do have one expert who is focused solely on drainage

1 issues, and I'm just wondering if the parties have an idea
2 whether or not they want to cross-examine Staff at this
3 point on drainage or if that's something they need more time
4 to determine.

5 HEARING OFFICER RENAUD: All right, that's a good
6 question. Let's start with Applicant.

7 MR. GALATI: No, Applicant and Staff are in
8 complete agreement on all areas of Soil and Water.

9 HEARING OFFICER RENAUD: CBD? This would be
10 drainage.

11 MS. BELENKY: If by drainage you mean surface
12 water, then yes we may, and I would know more a little bit
13 later.

14 HEARING OFFICER RENAUD: Issues about washes is
15 what I assume you're talking, yes.

16 MS. DeCARLO: That's correct.

17 HEARING OFFICER RENAUD: Okay. So we'll take that
18 as a tentative yes.

19 MS. BELENKY: Yes.

20 HEARING OFFICER RENAUD: Any other party on
21 washes, drainage across washes?

22 MS. CUNNINGHAM: Yeah, Basin and Range Watch might
23 want to cross-examine on that.

24 HEARING OFFICER RENAUD: All right, very good.

25 MS. DeCARLO: Okay, we'll make sure --

1 HEARING OFFICER RENAUD: We're pretty sure we'll
2 need people then. All right.

3 Now, tomorrow is the big day then. You'll be
4 filing your testimony -

5 MR. GALATI: That's correct.

6 HEARING OFFICER RENAUD: -- your exhibits and so
7 on in written form so that we can all see them.

8 MR. GALATI: That's correct and that brings up --
9 one of the things we did in the Genesis Project that I'm
10 specifically asking Basin and Range Watch and CBD, you know,
11 I have large boxes as the Applicant has the burden of proof,
12 I have several tens of exhibits. And what we would like to
13 be able to do is make a CD with those all on PDF and serve
14 you with those rather than try to serve a large box.
15 Everything's been docketed previously. Were you okay
16 receiving this on a CD?

17 HEARING OFFICER RENAUD: Basin and Range Watch, is
18 a CD okay?

19 MS. CUNNINGHAM: Yeah, Laura Cunningham here.
20 That is completely acceptable to us. Can I give you the
21 correct mailing address for that so we can get it in time,
22 Scott?

23 MR. GALATI: Yes, please. Is this, is this a
24 place I can pop in the mail or FedEx to you?

25 MS. CUNNINGHAM: Could it be Priority Mail, U.S.

1 Post Office?

2 MR. GALATI: Sure.

3 MS. CUNNINGHAM: P.O. Box 70, Beatty, B-E-A-T-T-Y,
4 Nevada 89003. I really appreciate it. Thanks.

5 MR. GALATI: Okay, and I would also extend the
6 courtesy for any exhibits that any of the other parties are
7 filing. Staff already have theirs through the Staff
8 Assessment. I would accept those as a CD as well. You
9 don't have to make hard copies and send them to me. If you
10 don't have very many and you want to serve me by e-mail;
11 that would be fine as well.

12 HEARING OFFICER RENAUD: Is everyone else okay
13 with receiving a CD of the Applicant's exhibits as opposed
14 to paper, a big box of paper?

15 MS. BELENKY: This is the Center for Biological
16 Diversity. Yes, I think we're fine with receiving the CD
17 and we would be happy to serve everything by e-mail, our
18 exhibits.

19 I just want to clarify that we still need to serve
20 a printed copy for the docket. Is that correct?

21 HEARING OFFICER RENAUD: Yes, I'm afraid you do.

22 MS. BELENKY: Okay.

23 HEARING OFFICER RENAUD: Yeah, someday we have to
24 change our regulations about that to bring us into the 21st
25 century, but for now we still need some paper, I'm sorry to

1 say that.

2 MR. GALATI: It wasn't long ago when it was one
3 and twelve copies to Docket.

4 HEARING OFFICER RENAUD: Yeah, twelve, right. A
5 truckload, it's true.

6 MS. BELENKY: Well, and I just wanted to clarify.
7 I mean, this is something I had written down to bring up
8 today. In one of the other matters we'd actually went to
9 all e-mail at one point and in this matter, you know, the
10 Center, both Ms. Anderson and I had asked to be e-mail
11 preferred and it was never put on the Proof of Service. But
12 I really feel like when we're especially dealing with such
13 short deadlines it kind of doesn't make sense to be doing
14 all this mailing and it's a waste of paper and resources.
15 So if there's any way that we could limit not just the use
16 of -- if we could go not just for the exhibits to the use of
17 e-mail or CDs, but also for all of the documents, I think
18 that that would be a big positive step.

19 HEARING OFFICER RENAUD: I think we have been
20 using electronic for copies of documents extensively and I
21 would encourage everybody to do that. If anybody needs
22 paper copies, of course you're entitled to them, but so far
23 I haven't really seen people ask for that.

24 I do have a request, however, for those using
25 electronic formats, particularly CDs, and that is to somehow

1 make it so that you can look at the -- open the CD and it
2 says Exhibit One, Exhibit Two, Exhibit Three and you can
3 click on it and it takes you to that exhibit. I don't like
4 having to scroll through trying to find, you know, the next
5 exhibit. So if there's some way to click to it that would
6 be great. I would really appreciate that.

7 MR. GALATI: We certainly can. And Hearing
8 Officer Renaud, we prepare two boxes. And while I wasn't
9 planning on giving you a CD as well, did you want a CD of
10 the exhibits?

11 HEARING OFFICER RENAUD: Yes, both please.

12 MR. GALATI: Then we will do that.

13 HEARING OFFICER RENAUD: Does anybody wish to add
14 anything further? I think we're pretty much done here.

15 (Long pause.)

16 HEARING OFFICER RENAUD: Okay, thank you for
17 holding on there for a moment. I'm going to take this
18 opportunity to remind the parties of the schedule issued by
19 the Committee dated September 28th, which sets forth filing
20 deadlines for the exhibits and testimony and so on. And we
21 consider those firm. It's only fair to the other parties
22 that each party abide by those dates. We have discussed
23 some changes to those dates today and we will issue an order
24 reflecting those changes.

25 But as far as the filing of your opening and

1 rebuttal testimony, the dates established by the Committee
2 are firm and we expect all parties, and that means including
3 Intervenor, to abide by those dates. Okay? Mr. Galati?

4 MR. GALATI: Okay. Just to make it easy for the
5 record. So opening testimony which has been modified by
6 stipulation of the party and granted by the Committee is
7 tomorrow, the 6th --

8 HEARING OFFICER RENAUD: Right.

9 MR. GALATI: -- for all topics except for Air
10 Quality and Soil and Water Resources, which has been moved
11 to the 12th, I believe.

12 HEARING OFFICER RENAUD: The 15th.

13 MR. GALATI: The 15th. Rebuttal testimony is
14 still due on the 11th for all topics except for those going
15 on October 27th, those four topics, which is now extended to
16 the 22nd. I think that's what we discussed.

17 HEARING OFFICER RENAUD: Yes, that's my
18 understanding, too. So except for those four, rebuttal is
19 October 11th, and as to those four it's going to be the
20 22nd.

21 MR. GALATI: I have one --

22 HEARING OFFICER RENAUD: let me just --

23 MR. GALATI: Okay.

24 HEARING OFFICER RENAUD: -- make sure everybody's
25 in agreement with that. Staff?

1 MS. DeCARLO: Yes, that was my understanding.

2 HEARING OFFICER RENAUD: Okay. CBD?

3 MS. BELENKY: Yes, that's my understanding.

4 HEARING OFFICER RENAUD: Basin and Range Watch?

5 MS. CUNNINGHAM: We agree.

6 HEARING OFFICER RENAUD: Good, thank you.

7 Mr. Galati?

8 MR. GALATI: I have one other thing to help the
9 Committee because we appreciate very much the Committee's
10 still working towards getting a decision by the end of the
11 year, and the more times things get moved and the later in
12 October that things come and it really squeezes the
13 presiding members' proposed decision.

14 I will try the following proposal again. If the
15 parties would agree, I believe that we can dispense with
16 written briefs, unless the Committee directs a particular
17 legal brief. And I wanted to make a distinction between
18 arguing the facts versus arguing the law, and that I would
19 like written briefs to be about an area of law or policy
20 that the Committee needs more legal research on.

21 But in order to give the parties an opportunity to
22 argue the facts, I would ask for the Committee to consider,
23 at the disputed topic areas, a brief closing statement which
24 is both parties' lawyers describing what they think the
25 facts say and what they think the Committee should do.

1 Sometimes we do those in briefs and I think that it has,
2 there's two benefits to that. One, it puts it in the record
3 so the Committee can understand, and two -- they can see it
4 all in one place -- and then two, it keeps the parties on
5 focus. If you write a closing argument before you come to a
6 hearing, you know where you're going to end up so you don't
7 stray. So I would recommend both of those to help with
8 the PMPD writing.

9 HEARING OFFICER RENAUD: The Committee likes that
10 proposal and thinks it would be a very good way of
11 summarizing each party's position and highlighting the
12 points you've been trying to make. Does anybody else wish
13 to say anything about that proposal? Obviously you wouldn't
14 have to make these closing arguments, but you'd have the
15 opportunity to. I think we would limit the time to, I'm not
16 sure exactly how many minutes, but I'm thinking five to ten
17 minutes on each topic.

18 MS. DeCARLO: And would that occur at the end of
19 the day or at the end of each topic area?

20 MR. GALATI: End of each topic.

21 MS. DeCARLO: Okay. That sounds fine with Staff.

22 HEARING OFFICER RENAUD: All right. Any of the
23 other parties oppose that idea?

24 (No response.)

25 HEARING OFFICER RENAUD: All right. That will be

1 the order then, we'll allow closing arguments on each topic,
2 but they are optional.

3 MS. BELENKY: I'm sorry. I just want to
4 understand. I understand they're optional. I'm not really
5 sure I understood Mr. Galati's statements about the
6 briefing.

7 HEARING OFFICER RENAUD: All right.

8 MS. BELENKY: I don't know that closing
9 statements are -- our issue -- let me just put this, make
10 this very clear. For the Center, one of the problems would
11 be, at least the other projects that we've been involved in,
12 is things change even during the hearing, the day before the
13 hearing, the day after the hearing. So being sort of pushed
14 to make a clear statement on one day and then have all the
15 other parties go out and make different decisions the next
16 day, doesn't really help anybody.

17 I understand that's the process. I understand
18 that's what apparently the Commission prefers, but it is
19 very hard to have a specific position that is stable when
20 the facts and the position of the other parties keep
21 changing. So I don't know that we would participate in a
22 closing statement, but I think that has been the confusion
23 all along.

24 HEARING OFFICER RENAUD: Well, one thing I might
25 suggest to you is that if you find, by the time we get to

1 the end of a topic, that you feel changes have taken place
2 of which you didn't have notice or don't understand or
3 something, the closing argument might be a time to highlight
4 that. It would be something the Committee could take into
5 consideration hearing from, hearing from you about that.

6 And I agree also about the written briefs. We
7 don't know if we're going to need those, but if we do
8 written briefs should focus on law, legal arguments not
9 factual ones.

10 All right. Basin and Range Watch, are you -- how
11 do you feel about this idea of the closing arguments? Does
12 that sound okay or you would object?

13 MS. CUNNINGHAM: Yeah, that sounds okay.

14 HEARING OFFICER RENAUD: All right, good. Anyone
15 else?

16 (No response.)

17 HEARING OFFICER RENAUD: All right. Does anyone
18 -- any of the parties wish to say anything further before we
19 move to public comment?

20 MR. GALATI: Nothing from the Applicant.

21 HEARING OFFICER RENAUD: None. Staff?

22 MS. DeCARLO: Nothing from Staff.

23 HEARING OFFICER RENAUD: Okay. Intervenors,
24 anything?

25 MS. CUNNINGHAM: No.

1 MR. HOLDER: No, thank you.

2 HEARING OFFICER RENAUD: All right, good. Is
3 there anyone on the phone who would like to comment to the
4 Committee about the proceedings today? If you do, just
5 speak up, state your name, and then proceed.

6 (No response.)

7 HEARING OFFICER RENAUD: All right, I don't hear
8 anyone. Either member of the Committee wish to say anything
9 to close out? Commissioner Weisenmiller?

10 COMMISSIONER WEISENMILLER: Yeah. We'd like to
11 thank the parties for their participation today and to
12 encourage people to work hard on trying to settle the issues
13 you can, and where you can't settle those, to be prepared to
14 go to hearings. Thanks again.

15 HEARING OFFICER RENAUD: Thank you, and we're
16 adjourned.

17 (Whereupon, the Status
18 Conference was adjourned.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of October, 2010.

PETER PETTY, CER**D-493

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

CAROL EDWARDS

October 8, 2010